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Paper No. 32

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**OFFICE OF PETITIONS**

In re application of  
McCune et al.  
Application No. 09/247,097  
Filing Date: February 9, 1999  
Attorney Docket No. 034942-130

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 14, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed September 26, 2000, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 27, 2000.

The above-identified application became abandoned for failure to timely pay the issue fee. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. See MPEP 711.03(c)(III)(A)(1). Therefore, the filing of a continuing application is not a proper reply under 37 CFR 1.137(a)(1) or (b)(1). In view of the authorization contained in the petition to charge any additional fees due, the \$650 issue fee will be charged to Deposit Account No. 50-1698.

Petitioner is advised that the issue fee paid in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.<sup>a</sup>

<sup>a</sup> The request to apply the issue fee to the new Notice must be made in writing and should be accompanied by the new Issue Fee Transmittal Form PTOL-85(b), along with a copy of this decision. The request and pertinent attachments should be addressed to Box Issue Fee. Additionally, if the issue fee has increased from the previously paid issue fee, the balance due must be submitted. **Failure to request in writing that the previously paid issue fee be applied towards the new Notice and payment of any balance due will result in the abandonment of the application.**

Any questions concerning this matter may be directed to the undersigned at (703) 308-6911.

The application file is being forwarded to Technology Center AU 2838 for processing the Request for Continued Examination pursuant to 37 CFR 1.114 filed with the instant petition.

A handwritten signature in cursive script that reads "Latrice Bond". The signature is written in black ink and is positioned above the printed name and title.

Latrice Bond  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy